

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Maurice B. Allen,

Plaintiff,

vs.

Deerfield Mfg. Inc.,
A Subsidiary of Ice Industries

Defendant.

* Case No.: C-1-02-492

* Judge Spiegel
Magistrate Judge Hogan

*

**DEFENDANT'S MOTION TO STRIKE
OR IN ALTERNATIVE, REQUEST
TO FILE SUR-REPLY**

*

Defendant, Deerfield Manufacturing Inc. ("Deerfield, Inc."), by and through its counsel, hereby moves this Court for an Order striking Plaintiff's Reply Memo in Support of Plaintiff's Objections to Report and Recommendation which was filed in this action on November 14, 2005.

On September 28, 2005, Magistrate Judge Timothy S. Hogan filed a Report and Recommendation ("R&R") which granted Defendant's Motion for Summary Judgment. The R&R also included a document entitled Notice to the Parties Regarding the Filing of Objections to this Report and Recommendation ("Notice"). The Notice clearly states that the parties are permitted to file objections to the R&R as well as a response to any objections. However, there is absolutely no mention of any party's right to file an additional document such as a Reply in Support of Objections.

Moreover, the Court is directed to Federal Civ. R. 72(B), which also states that a party may object to a R&R and the opposing party has a right to respond to such objection. However, there is absolutely no mention of any Reply being permitted to be filed.

In this case, Plaintiff objected to the Magistrate's recommendation that Defendant's Motion for Summary Judgment be granted. Defendant responded to Plaintiff's objections. Under the Federal rules and per the Notice given by this Court, no further pleadings were permitted. However, Plaintiff, on November 14, 2005, submitted a "Reply Memo in Support of Plaintiff's Objections to the Report and Recommendation." This filing is contrary to the Federal Rules and the Notice provided by this Court. On this basis, Defendant moves to strike the Reply Memo that Plaintiff filed on November 14, 2005. If the Court is not inclined to strike Plaintiff's Reply Memo and is willing to consider it, then Defendant seeks leave to file a Sur-Reply countering the allegations and arguments set forth by Plaintiff in his Reply Memo.

For the foregoing reasons, Defendant respectfully requests this Court to strike Plaintiff's Reply Memo in Support of Plaintiff's Objections to Report and Recommendation or alternatively, grant Defendant leave to file a Sur-Reply in support of its arguments, contra Plaintiff's objections, and in further support of the Magistrate's Report and Recommendation.

Respectfully Submitted,

/s/ **WISE & DORNER, Ltd.**
Renisa A. Dorner
Renisa A. Dorner (0040192)
WISE & DORNER, Ltd.
151 N. Michigan Street, Ste. 333
Toledo, Ohio 43624
Tel: (419) 327-4303
Fax: (419) 327-4302
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of November, 2005, a copy of foregoing Defendant's Motion to Strike or in Alternative, Request to File Sur-reply was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Renisa A. Dorner
Renisa A. Dorner (0040192)

E:\Deerfield Mfg\Allen\motiontostrike-surreply.wpd